January 14, 2016
Testimony in Opposition of HB2289
Submitted by Christopher Mann
MADD National Board of Directors / Kansas Advisory Board

Honorable Chairman Barker and Members of the House Committee on Judiciary:

Thank you for the opportunity to address you in opposition of House Bill 2289. I am a volunteer and advocate for Mothers Against Drunk Driving (MADD) as well as the victim of a drunk driver. Prior to the crash that ended my career, I was a police officer in Lawrence Kansas and after was a prosecutor in Wyandotte County Kansas. MADD is strongly opposed to HB2289

This bill shows a complete lack of understanding of not only the administrative hearing process, but of the precedent, history and science-based reasoning behind drunk driving laws. It is an abhorrent attempt to regress the laws of this state and encourage increased drunk driving.

K.S.A. 8-1002 is the statute that requires law enforcement to prepare a DC-27 form--this form is prepared to certify a person has refused a test or taken a test whether blood or breath and failed it (ie. at or over 0.08).

At the current time law officers do not have to certify the reason for any encounter with the driver as long as the officer when requesting the test has 'reasonable grounds to believe they are under the influence' and the officer has reasonable belief the person was operating a vehicle.

This allowance has been approved by the Kansas Supreme Court in even extreme cases: In *Martin*, the Kansas Supreme Court upheld the district court's determination that the arresting officer lacked constitutional authority to conduct a traffic stop *State. v. Martin*, 285 Kan. at 639. The Martin court, however, refused to suppress the breath test results. It held that the exclusionary rule for violations of the Fourth Amendment does not apply in administrative proceedings to suspend driving privileges for DUI because the deterrent effect of the rule is already accomplished when addressing the criminal prosecution of the DUI offense itself. 285 Kan. 625, Syl. ¶ 8. Thus, even though a petitioner is not precluded from raising Fourth Amendment questions during administrative appeals, "such claims have no practical effect (meaning such claims do not trigger the exclusion of resultant evidence) in the administrative context." *State v. Kingsley*, 288 Kan. at 396.

The safeguard in the administrative action is the fact if no reasonable grounds exists for the officer to ask for the test (no matter the results of the testing or if the person refuses) and the person was operating a vehicle, the driver will be able to keep their license.

Continuing reading the bill, K.S.A. 8-1020 talks about the scope of the hearing and allows for this reasoning to be explored. The bill says the officer has to "suspect the person was committing or had committed a crime or a traffic infraction or was involved in a crash".

This bill eliminates a plethora of legitimate law enforcement contacts, including; Check lanes, anonymous callers, welfare checks, public safety checks, child in need of care requests, amber alerts, warrant service, stolen automobiles, aggravated assaults stemming from road rage, rolling domestic disturbances, voluntary encounters, reported accidents with no damage or injury, suspects in crimes unrelated to driving and motorist assists just to name a few.

Checklanes have been ruled constitutional by the Kansas Supreme Court. *See City of Overland Park v. Rhodes*, 46 Kan. App. 2d 57, 257 P.3d 864 (2011) citing *State v. Deskins*, 234 Kan. 529, 673 P.2d 1174 (1983). Persons entering checklanes would not have committed a traffic infraction or been involved in a crash, so any DUIs caught in a checklane would not be subjected to a DL hearing on their license

Voluntary encounters happen when intoxicated people come in contact with law enforcement---for an example a roadblock had been set up by law enforcement to move a piece of equipment on the road and all cars were diverted away from the area. One car pulled up and parked. The officer wondering why the person stopped there--approached and asked if he needed help in leaving the area. The officer, upon contact noticed impairment and eventually arrested the person for DUI. This also would not be subjected To a DL hearing on their license *See State v. Loveland*, 225 P.3d 1211 (Kan. Ct. App. 2010).

This bill would also eliminate 40 years of scientific research by NHTSA and IACP, which have issued guidelines and indicators of impairment that include driving mannerism that are indicative of impaired driving, but do not necessarily rise to the level of a traffic infraction.

The point of the DL hearing is to keep us safe from drunk drivers. This law would have the absurd result of allowing dangerous drivers back onto our roadways based on a loophole. There is no benefit to the state of Kansas in passing this law. This is one of the most egregious efforts to increase drunk driving in our state and will only serve to put our families and friends at greater risk.

The judicial recommendations to this bill also cause some concern. By creating a new level of scrutiny at the time of appeal is essentially creating a two-step administrative hearing process. This would cause protracted license hearings and would eliminate the public safety aspect of the administrative hearings. This concern might be eliminated if the administrative penalties remained in place pending the outcome of the appeal.

MADD strongly urges a vote against this ill-advised bill. Common sense demands this bill not pass.

Christopher Mann
Mothers Against Drunk Driving
Chrismann9808@gmail.com / 785-979-2204